

EXHIBIT A

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: METHYL TERTIARY BUTYL
ETHER ("MTBE") PRODUCTS
LIABILITY LITIGATION

00 MDL 1358
Master File C.A.
No. 1:00-1898(SAS)

-----x

October 31, 2007
10:10 a.m.

Before:

HON. SHIRA A. SCHEINDLIN,

District Judge

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APPEARANCES

WEITZ & LUXENBERG, P.C.
Plaintiffs' Liaison Counsel

ROBIN L. GREENWALD

ROBERT J. GORDON

STEVEN J. GERMAN

LEMUEL M. SROLOVIC

BARON & BUDD

Attorneys for Plaintiffs
Suffolk County water Authority
United water of New York

SCOTT SUMMY

SHER LEFF LLP

Co-lead attorneys for Plaintiffs

VICTOR M. SHER

MICHAEL A. CARDOZO

Corporation Counsel of the
City of New York

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2 THE COURT: I'm done. I'm moving on to well
 3 contention interrogatories.
 4 No, defendants do not have to point the finger and
 5 tell you who they can -- no, no, that's over too. We've solved
 6 another waste of time. Do you want to still be heard,
 7 Mr. Walsh?
 8 MR. WALSH: No, your Honor, I'm going to follow
 9 Mr. Garvey's roll and retreat.
 10 THE COURT: That's good. So now we actually have a
 11 couple real questions and then we just get to the schedule.
 12 We have a question about Dr. Belpoggi. We have a
 13 question about where she should be deposed and whether her lab
 14 should be inspected. I wish I could tell you my instinct.
 15 Both sides have good arguments. I did wonder about the twelve
 16 and the five. In one of the letters you said twelve people
 17 would have to fly to Italy and then the response letter says it
 18 couldn't be more than five. Why is it twelve or why is it
 19 five?
 20 MR. WALLACE: Frankly, your Honor, we don't know how
 21 popular this deposition will be.
 22 THE COURT: It depends on the month, doesn't it?
 23 MR. WALLACE: And the location.
 24 THE COURT: Yes, for me. Bologna in December isn't
 25 bad. But anyway, go ahead.

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1 MR. WALLACE: My, frankly, best guess is somewhere
 2 around eight.
 3 THE COURT: Eight. Just lawyers?
 4 MR. WALLACE: I'm sorry, no, that includes the
 5 three -- the reporter, the videographer and the translator. So
 6 eight people is my best guess.
 7 THE COURT: Would have to go that way. From just the
 8 defense side. And then probably a plaintiff's lawyer would go
 9 too. So that's at least nine people traveling, as opposed to
 10 one, and I understand the problem. You don't want to lose her
 11 by annoying her, so to speak, and you think maybe that's what
 12 defendants are doing is trying to annoy her enough so she drops
 13 out because it would cost her a week, you said, by the time she
 14 flies here, flies there. They want three days with this woman?
 15 MS. GREENWALD: That's right.
 16 THE COURT: That's ridiculous. Who agreed to three
 17 days?
 18 MS. GREENWALD: You know, that's a whole other issue.
 19 We agreed to it because they asked for it, and we have tried
 20 very hard to agree to most of their requests.
 21 THE COURT: Well, if they want three days, they ought
 22 to go there, but if we cut it back to two days, will she come
 23 here? Is it that easy to solve? Because I can see how the
 24 time adds up for her to fly both ways plus three days, and I
 25 don't see why they need three days, so if we cut back to two

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1 days and, you know, it's always good to come to New York, too.
 2 Maybe she should just come here and save nine people traveling.
 3 But I don't think three days makes sense. If you really want
 4 three days, go to her.

What is it, Mr. Wallace?

MR. WALLACE: If you give us that direction, three

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7 days we have to do it in Italy, two days we'll do it here,
 8 let's meet with the plaintiffs and we'll figure out which is
 9 preferable. The only reason that three days were requested --
 10 THE COURT: I know, translating. I know. I try cases
 11 all the time with translators. It's slow.
 12 Anyway, does that help, to say if it's two days, it's
 13 New York, if it's three days, it's Italy? It's not a big
 14 difference, but...
 15 MS. GREENWALD: It is a burden for Dr. Belpoggi, and I
 16 guess the fact is is that the defendants asked us at the
 17 beginning of expert discovery to enter into a protocol.
 18 THE COURT: I know. And you did write about that. It
 19 should be nearest to the expert, but this is Italy, it's far,
 20 it's a hardship. I mean, you know, we get a little older each
 21 year, and the jet lag gets harder, as far as I'm concerned,
 22 than it used to. But anyway, it is hard. Everybody's really
 23 busy right now and to fly off to Italy is quite exhausting.
 24 MS. GREENWALD: That's true.
 25 THE COURT: And she is only one person and New York
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1 isn't so bad either. You can buy her a nice ticket. I'm
 2 figuring nine compared to one, you can buy her a nice ticket
 3 and it will be a nice ride. Might be easier for her to come.
 4 MR. WALLACE: And we'll pay for that nice ticket.
 5 THE COURT: Whoo. I think she ought to grab it,
 6 frankly. That sort of did it. Two days, nice ticket. Try to
 7 get her to do it.
 8 MS. GREENWALD: Let us talk. Thank you, your Honor.
 9 THE COURT: See if you can resolve it.
 10 MS. GREENWALD: Thank you.
 11 THE COURT: Now comes the lab inspection. This one
 12 confuses me too. The plaintiffs make some good points and say
 13 you were able to prepare your reports without seeing this, your
 14 experts had no trouble criticizing her work without seeing the
 15 actual size, a lot of what they do want to see is available on
 16 the website. Again, I get this little slight sense of, you
 17 know, trying to drive her out of the case or one thing or
 18 another, but what's the real need to see this? The experts
 19 were able to comment without it and a lot of stuff is on the
 20 website. People don't really like people tromping through
 21 their labs. Why do you need to do it? After all, it's a bit
 22 tangential anyway, but why do you need to do it?
 23 MR. WALLACE: Actually, it's really quite important,
 24 your Honor. This is an issue of sum and substance.
 25 THE COURT: The animal slides in this trial?
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1 MR. WALLACE: Well, if Dr. Belpoggi is going to take
 2 the stand and tell the jury that she concluded that MTBE can
 3 cause cancer in humans based on this test, it's very important.
 4 THE COURT: Is she going to say that, in this trial,
 5 that MTBE can cause cancer in humans, based on her animal
 6 studies? Are you really offering that at this trial? Because
 7 I'm not going to allow that anyway. Do we need that in this
 8 trial? We've got enough problems.
 9 Conferring is good. They're conferring.
 10 (Pause)
 11 MR. ISSACHAROFF: Your Honor, we can't say exactly.

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12 It depends on the nature. She's a rebuttal expert.
 13 THE COURT: I know she's a rebuttal expert,
 14 MR. ISSACHAROFF: If they try to put on evidence that
 15 MTBE is not harmful or in some fashion go after -- The problem
 16 is, she's the author of the definitive study, and if they are
 17 going to go after the study and say the health risks are
 18 exaggerated, the MCL doesn't really correspond to any known
 19 health risk, then at that point she should be able to defend
 20 the work that she's done. She should be able to say, I've
 21 conducted a study, it was published in a peer review journal,
 22 and subject to whatever Daubert motions they want to make ahead
 23 of time, which seem unfruitful in this area, she should be able
 24 to defend her study. The idea --
 25 THE COURT: But can't she defend her study without
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1 that ultimate comment that MTBE causes cancer and can cause
 2 cancer in humans based on my animal studies? That's sort of
 3 way out. We don't have a risk of cancer case here and we don't
 4 want to have one. We've got a complicated enough property
 5 damage case. I don't know that we need that. Does she need to
 6 go that far or can she generalize health risks? Because the
 7 leap to can cause cancer in humans because of animal studies is
 8 problematic anyway, and that is subject to Daubert. This
 9 leaped conclusion, it's tough. Can cause cancer in humans
 10 based on animal studies is always difficult.
 11 MR. ISSACHAROFF: But that's a standard protocol
 12 that's used in these scientific studies and --
 13 THE COURT: Yes and no. It kind of depends, if we're
 14 in a cancer case, so to speak. If we have a real live
 15 plaintiff who's claiming that and that's the best proof that
 16 the person can come up with. But we're not there. We don't
 17 have a risk of cancer case we want to try. You want to talk
 18 about health risks, I sort of understand in a generalized way,
 19 but I don't know if we need to go that far. That would be a
 20 real sideshow to start talking about risk of cancer, fear of
 21 cancer and all that.
 22 MR. SUMMY: Basically what she will testify to is
 23 about her study and that MTBE can cause health problems, not
 24 that anybody's got cancer from it, but she will generalize it
 25 because the whole point of it is is, jury, that's why you
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1 should award damages to filter the water because people
 2 shouldn't be exposed to it. It's not a specific causation
 3 argument; it's more of a general causation argument. And
 4 that's what she does. It's to rebut the fact that they say
 5 MTBE doesn't cause health problems, when it does. And that's
 6 what it is. But it's not proving that anybody's got cancer,
 7 it's not saying that anybody's going to get cancer. It's
 8 generalized health problems, and that's why the water's got to
 9 be filtered. That's what we've proffered her for.
 10 THE COURT: So what the plaintiffs are saying is that
 11 if the defendants are going to say through their experts that
 12 there's no health risks from this stuff anyway, even if it's
 13 there, it presents no health risks, they do want to be able to
 14 call her on rebuttal to say there are health risks, not
 15 necessarily going to say I'm going into a whole long
 16 explanation of why my animal studies support the fact that

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17 somebody's going to come down with cancer or a particular form
 18 of cancer but I think my studies show there's a health risk,
 19 even though right now it's based on animal studies. I don't
 20 know.

21 MR. WALLACE: From our perspective, your Honor, this
 22 issue of health risks is almost inevitable in the trial. The
 23 jury will hear about it.

24 THE COURT: That's true, to some degree.

25 MR. WALLACE: And if I may be allowed just a moment to
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1 describe Dr. Belpoggi's study, it was done at a laboratory in
 2 Italy called the Ramazzini Foundation Laboratory.

3 THE COURT: I read it in your letters.

4 MR. WALLACE: And you probably read then also that
 5 that laboratory also did another study on a common sweetener
 6 called aspartame.

7 THE COURT: Yes.

8 MR. WALLACE: Well, that study, exactly like the MTBE
 9 study, concluded that aspartame was a carcinogen to animals
 10 because they discovered a certain higher incidence of lymphomas
 11 and leukemias, and they concluded that the lymphomas and
 12 leukemias were attributable to the aspartame.

13 When the European Food Safety Commission reviewed the
 14 study, it discovered that the colony of animals used in this
 15 laboratory had a chronic lung infection, and it concluded the
 16 increased incidence -- and I'm quoting now -- "The increased
 17 incidence of lymphomas and leukemias reported in treated rats
 18 was unrelated to aspartame, given the high background incidence
 19 of chronic inflammatory changes in the lungs."

20 THE COURT: Right. But you've got it. You've got the
 21 cross-examination ready. You've got the impeachment ready.
 22 You just told it to us. If these were the jurors, I'm sure
 23 they would agree with you.

24 MR. WALLACE: What the pathologists want --

25 THE COURT: Say again? What the pathologists want?
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1 MR. WALLACE: Yes, your Honor. We have two
 2 pathologists, and the leading pathologist is Dr. McConnell. He
 3 was the director of toxicology testing for the National
 4 Institute of Environmental Health Sciences. He was at
 5 Dr. Belpoggi's Ramazzini lab when the MTBE study was being
 6 conducted, and he has reported since that he actually heard
 7 sounds from the rats which led him to wonder if they were
 8 diseased. And it's the disease, the chronic lung disease, that
 9 the European Food Safety Commission discovered in this colony
 10 of rats.

11 THE COURT: But still, you already have what you need.
 12 You have the impeachment. You have the European studies, you
 13 have Dr. McConnell maybe, whatever name you said -- did you say
 14 McConnell?

15 MR. WALLACE: Yes, your Honor.

16 THE COURT: You did. Okay. You have Dr. McConnell,
 17 you have the European study, you have what you need.

18 MR. WALLACE: We certainly have a lot of ammunition.
 19 But if Dr. McConnell can look at the slides, he can determine
 20 whether the lymphomas and leukemias that were reported, and --

21 THE COURT: In the aspartame study?